IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 30916 of 2007(E)

PETITIONER:

M.R.F.LIMITED, VADAVATHOOR,
KOTTAYAM - 686 010,
REPRESENTED BY MICHAEL A.RIBIERO,
GENERAL MANAGER.

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
SRI.SAJI VARGHESE
SMT.MARIAM MATHAI

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. KERALA SALES TAX APPELLATE TRIBUNAL THIRUVANANTHAPURAM REPRESENTED BY ITS CHAIRMAN.

3. THE DEPUTY COMMISSIONER (APPEALS), KOLLAM.

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/10/2007, THE COURT ON 30/10/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 30916 OF 2007 E
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Dated this the 30th day of October, 2007

J U D G M E N T

The two substantial prayers in this writ petition are the following.

a) declare that Section 76 of the Kerala Court Fees and Suits Valuation Act 1959 and Exts. P1 and P2 as ultra vires, without legislative competence, unconstitutional and void in respect of the appeals filed by the petitioner before the Deputy Commissioner (Appeals) and Appellate Tribunal under the Kerala General Sales Tax Act, Central Sales Tax Act and Kerala Value Added Tax Act.

b) direct the respondents to refund the amount of Rs.5,41,815/- with interest @ 24% collected without authority of law as additional court fee in respect of three appeals before the Deputy Commissioner of Appeals (Kollam).

2. The issues that are raised in this writ petition have already been considered by this court in the judgment in the case of **Ismail v. State of Kerala (2005(3) KLT 1052)**. The judgment of the learned Single Judge has also been affirmed by the Division Bench of this Court in **Chackolas Spinning and**

Weaving Mills Ltd. v. State of Kerala 2006(1) KLT 989).

3. Inspite of the above decision, the learned senior counsel contended that the points urged in the writ petition have not been raised or considered in these judgments. It is submitted that the appellate authorities created under the Kerala General Sales Tax Act or Central Sales Tax Act are not courts or discharge the duties of administration of justice, but are only statutory functionaries, which are part of the machineries for collection of tax. Therefore, there is no justification or legislative competence for levying court fee when appeals are filed to these authorities. Further, it is pointed out that in most of such appeals, litigants are represented by Chartered Accountants. Since no service is rendered by any advocates or their clerks in respect of such appeals, Section 76 of the Kerala Court Fees Act providing for legal benefit fund to which proceeds of additional court fee credited is totally irrelevant and in applicable in as much as no benefit is derived from any advocate or clerk, to a litigant like the appellant.

4. Irrespective of the contentions that are raised, in my

view the constitutional validity of the Section and the fee that is imposed by virtue of the Government orders that are impugned by the petitioner, it is not open to the petitioner to re-agitate these contentions.

In view of what is stated above, the writ petition is only to be dismissed and I do so.

ANTONY DOMINIC, JUDGE.

Rp